

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

July 14, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Oahu

Encroachment Determination on State Land and Imposition  
of Fine, An-Sui and Tracy Leiko Sakotani Lee, Aiea,  
Ewa, Oahu, Tak Map Key 9-9-09:013 (por).

LEGAL REFERENCE:

Section 171-6(12), Hawaii Revised Statutes, as amended.

BACKGROUND:

On December 9, 2004, the Oahu Land District received a call by an individual who identified himself as Mr. Lee, later confirmed to be An-Sui Lee. He reported that he was selling his property at 99-1150 Halawa Heights Road and hired a contractor to remove dirt, rocks and concrete blocks from the lot. However, instead of hauling it away, the contractor pushed the material onto State land in the back of the property, as shown on the attached map labeled Exhibit "A". The State land is a portion of Aiea, Ewa, Oahu and is identified as Tax Map Key 9-9-09:013. It is zoned urban.

Mr. Lee attempted to remove the encroachment, but was denied access across the property by the buyers, Errol and Theodora Kane, who claimed legal possession of the property. Since there was no other access to the State land in this area where a truck and equipment could be brought in, the Lees claimed the encroachment could not be removed.

In an effort to resolve this situation, the parties entered into mediation. We received a request from Dispute Prevention and Resolution of Hawaii (DPR), to consider allowing the material to remain since it was DPR's understanding that the material posed no threat to persons or property. DPR's mediator, retired judge Mrs. Marie Milks, asked for an advisory letter stating that the debris could remain where it is (undisturbed) and that neither

the Lees nor Kanes would suffer any legal consequence. We attach a copy of DPR's letter, labeled Exhibit "B".

Staff responded to DPR on May 24, 2006 with the attached letter, labeled Exhibit "C". Staff explained that although there may be a contractual dispute between the Lees and the Kanes, there remains an encroachment on State land that needs to be resolved. Staff does not believe an appropriate remedy or solution would be to simply leave the material and debris on State land; leaving the material there raises maintenance and liability concerns on the part of the State. Therefore, staff requested that the responsible party or parties immediately remove the foreign material and debris from the State land. In its letter, staff advised that if this material is not removed, the State will proceed with appropriate action against the wrongdoers, which action may include the cost of removal, fines and penalties.

Staff believes that the Lees are the responsible party for the encroachment, by the admission of Mr. An-Sui Lee in his call to staff, and by the statements made by DPR in its letter.

REMARKS:

Below the dumped material is a pathway, along a sewer easement, that appears to be used often. Staff is concerned that the rocks and concrete blocks could roll or slide down on people who are walking below. Also sharp pieces of sheet metal could injure people that walk through this area.

Staff respectfully requests the subject encroachment be removed within thirty (30) days from the date of this submittal. If it is not removed, staff is requesting a fine of \$500.00 a day, pursuant to Section 171-6(12) of the Hawaii Revised Statutes, until it is removed.

RECOMMENDATION:

That the Board do the following:

- A. Find that there is an encroachment on State land in Aiea, Ewa, Oahu, identified as a portion of Tax Map Key 9-9-9:013, caused by An-Sui and Tracy Leiko Sakotani Lee.
- B. Require An-Sui and Tracy Leiko Sakotani Lee to remove said encroachment to the satisfaction of the Department of Land and Natural Resources.

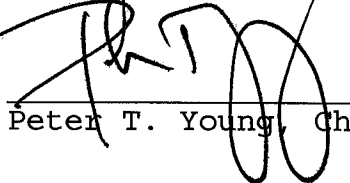
- C. Impose a fine of \$500.00 a day if the encroachment is not removed within thirty (30) days of the date of this board submittal and subject further to the following:
1. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

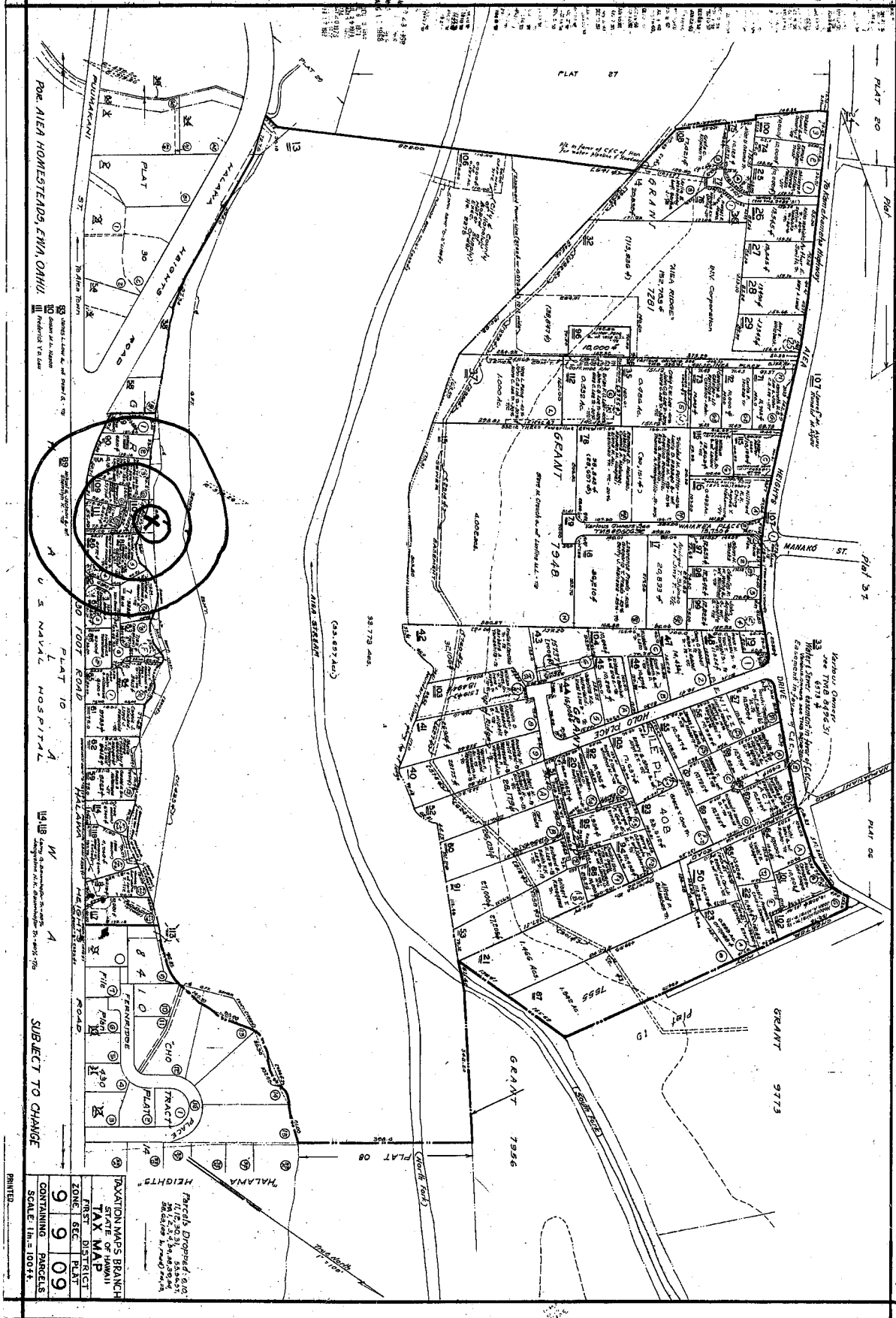
Respectfully Submitted,



Cecil Santos  
Oahu District Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson



**EXHIBIT "A"**

55338

Law Office of  
**William W. Milks**  
Attorney at Law

RECEIVED

ASB Tower Suite 977  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Tel: (808) 526-3923  
Fax: (808) 523-2988  
Email: energylaw@hawaii.rr.com

06 APR 24 A 8 48

April 21, 2006

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

RECEIVED  
LAND DIVISION

APR 24 3 30

Honorable Peter Young  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, HI 96809

Re: Mediation (DPR 05-0083-M) of Errol and Theadora Kane v.  
An-Sui and Tracy Leiko Sakotani Lee and  
Five Star Realty, Inc. (Vincent Lao) and  
Coldwell Banker Pacific Properties (John Fitzgerald Patrick)  
Property at 99-1150 Halawa Heights Road, Pearl City

Dear Mr. Young:

In April 2005, I was privately retained through Dispute Prevention and Resolution of Hawaii to assist in resolving potential litigation concerning the above parties and property.

Initially, the Kanes were represented by attorney Ronald Au, but he was disbarred and they have now retained retired Justice Robert Klein. Several other lawyers are involved: Christian Porter for the Lees, Patricia Kim Park for Five Star Realty, Inc. and Arthur Kuwahara for Coldwell Banker Pacific Properties. We are doing everything we can to avoid the filing of a lawsuit which will inevitably result in further costs and untold legal proceedings.

One issue revolves around the debris and rocks which the sellers cleared from the afore-referenced vacant land onto adjoining State conservation property. We attempted to have the Lees remove the debris, but ultimately the Kanes would not allow them to egress their property to do that; further, the Lees refuse to be financially responsible for paying for the removal that the Kanes arrange.

To resolve this impasse, I offered to contact your Department and was advised to speak with Cecil Santos. I explained the situation and a proposed suggestion. Mr. Santos asked that I write to you, as head of the department.

It is my understanding that the debris and rocks pose no threat to persons or property and that there appears to be only the concern that the State may seek to cite or fine either the Lees or the Kanes for the encroachment onto State land. If the State is willing to prepare

**EXHIBIT "B"**

an opinion letter or advisory letter that the debris can remain where it is (undisturbed) and that neither the Lees nor Kanes will suffer any legal consequence, it will go a long way toward a settlement of this case. The Kanes still wish to proceed with the purchase of the property, but if we cannot get beyond this stalemate, I fear that an arduous and protracted litigation will ensue.

In light of the above, I would appreciate a response from you. Since I will be on vacation from April 27 to May 19, there is no urgency for an immediate response. The parties have been advised that I will not be able to get back with them until my return.

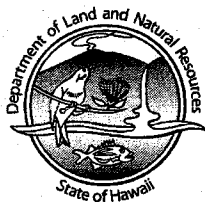
Thank you in advance for your kind attention. If you need to telephone me, I will be available through Wednesday, April 26. My cell number is 226-5633.

Very truly yours,

A handwritten signature in cursive script that reads "Marie N. Milks". The signature is fluid and elegant, with a long horizontal flourish extending to the left.

Marie N. Milks, Judge (retired)

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**PETER T. YOUNG**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
DEPUTY DIRECTOR

**DEAN NAKANO**  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

May 24, 2006

Marie N. Milks, Judge (retired)  
Dispute Prevention & Resolution, Inc.  
1001 Bishop Street, Suite 1155  
Pauahi Tower  
Honolulu, Hawaii 96813

Dear Judge Milks,

Subject: Disposal of Material, State land, Aiea, Oahu, TMK (1) 9-9-009:013 (portion)

Thank you for your letter of April 21, 2006, informing us of the existence of foreign material and debris placed on State lands situated at TMK (1) 9-9-009:013 (portion), by a contractor retained by the adjacent property owner, An-Sui and Tracy Leiko Sakotani Lee, who reside at 99-1150 Halawa Heights Road. You had asked our permission to allow the foreign material and debris to permanently remain on the State lands.

We inspected the State site and found that the foreign material and debris constitute approximately 10-15 wheelbarrows of cut sheetmetal, cut rocks, concrete pour blocks and concrete pilings. While we understand that there may be a contractual dispute between the Lees and Errol and Theadora Kane as to who is actually responsible for the removal of the foreign material and debris, we do not believe an appropriate remedy or solution would be to simply leave the material and debris on the State lands. This raises, among other issues, maintenance and liability concerns on the part of the State. Accordingly, we respectfully request that the responsible party or parties immediately remove the foreign material and debris from the State lands. Please be aware that if the foreign material and debris is not removed from the State lands, then the State will be forced to proceed with appropriate action against the wrongdoers, which action may include the cost of removal, fines and penalties.

**EXHIBIT "C"**

Marie N. Milks, Judge (retired)  
May 24, 2006  
Page 2

Thank you in advance for your understanding and anticipated cooperation on this matter. Should you have questions, please contact Supervising Land Agent Steve Molmen of Land Division at 587-0439.

Sincerely,

A handwritten signature in black ink, appearing to be "Russell Y. Tsuji", written over a horizontal line.

Russell Y. Tsuji  
Administrator